

REMARKS

I. Summary of the Examiner's Action

A. Claim Rejections

As set forth in paragraph 7 on page 3 of the April 21 Office Action, claims 1 – 3, 9 – 10, 16 – 18, 20 – 23, 26 – 30 and 34 – 45 stand rejected under 35 USC 103(a) as being unpatentable over United States Patent Serial No. 6,128,661 to Flanagan (hereinafter “Flanagan” or “the Flanagan patent”) in view of United States Patent Application Publication No. 2005/0198376 A1 to Kotzin (hereinafter “Kotzin” or “the Kotzin application”).

As set forth in paragraph 8 on page 9 of the April 21 Office Action, claims 5 – 7, 13 – 15, 19, 25 and 32 – 33 stand rejected under 35 USC 103(a) as being unpatentable over Flanagan in view of Kotzin and further in view of United States Patent Application Publication No. 2004/0185885 A1 to Kock (hereinafter “Kock” or “the Kock application”).

As set forth in paragraph 9 on page 11 of the April 21 Office Action, claims 4, 24 and 31 stand rejected under 35 USC 103(a) as being unpatentable over Flanagan in view of Kotzin and further in view of United States Patent Application Publication No. 2004/0023664 to Mirouze *et al.* (hereinafter “Mirouze” or “the Mirouze application”).

As set forth in paragraph 10 on page 11 of the April 21 Office Action, claim 11 stands rejected under 35 USC 103(a) as being unpatentable over Flanagin in view of Kotzin and further in view of United States Patent No. 5,961,588 to Cooper (hereinafter “Cooper” or “the Cooper patent”).

As set forth in paragraph 11 on page 13 of the April 21 Office Action, claim 12 stands rejected under 35 USC 103(a) as being unpatentable over Flanagin in view of Kotzin and further in view of United States Patent No. 6,882,659 to Novak *et al.* (hereinafter “Novak” or “the Novak patent”).

These rejections are respectfully disagreed with, and are traversed below.

II. Applicants’ Response – Claim Rejections

Claim 1 is reproduced here as a convenience to the Examiner (emphasis added):

1. A method of transferring service settings from a first device to a second device, wherein the first and second devices each have the same predetermined hierarchical data structure, comprising:

 sending a data transfer request identifying a first portion of the hierarchical data structure from the first device to the second device, the first portion comprising data descriptive of service provider provisioned service settings for a first service;

copying the data descriptive of service provider provisioned service settings stored at the first portion of the hierarchical data structure of the second device from the second device to the first device;

storing the copied data at the first portion of the hierarchical data structure of the first device; and
using, at the first device, the data stored at the first portion of the hierarchical data structure as settings for the first service.

Applicant respectfully submits that the relied-upon combination neither describes nor suggests the emphasized subject matter. As a result, the Examiner has not established a prima facie case of obviousness because the relied-upon combination does teach each and every limitation of claim 1. Accordingly, Applicant respectfully requests that the outstanding rejection be withdrawn.

Applicant's invention is concerned with transferring service settings for use in operating a service from a first mobile device to a second mobile device. Kotzin, on the other hand, is concerned with transferring content (particularly content subject to protection by digital rights management software) from one mobile device to another.

Exemplary services that Applicant's invention is intended to work with are described as follows at page 1, lines 21 - 22: "These services may, for example, include internet access, messaging services, remote storage services, e-mail, etc."

Accordingly, Applicant repeats that it is not seen what relevance the Kotzin reference has to the above-emphasized subject matter of claim 1. As a result, it is not seen how Kotzin can remedy the admitted deficiencies of Flanagin. Applicant's

argument bears repetition and further explanation. The above-emphasized subject matter of claim 1 is concerned with “service settings”, and the Kotzin reference is concerned with “content”. “Content” generally refers to artistic material that is available in an electronic setting for playback by a user. A definition of “content” from Merriam-Webster’s Online Dictionary is reproduced here (emphasis added):

“con·tent: ... 1 a: ... c: the principal substance (as written matter, illustrations, or music) offered by a World Wide Web site <Internet users have evolved an ethos of free *content* in the Internet — Ben Gerson>”

Kotzin adopts this definition of content, as is apparent from the following portion appearing at [0022] reproduced here (emphasis added):

“The source from which the content 104 is transferred from may depend on the characteristics of the content 104. The source may also depend on the operations of the service provider serving the device which is receiving or sending the content 104. For example, if the content 104 is a large data file, then it may be more efficient and faster to transfer the content 104 from a source other than the first device 102 which has greater bandwidth and processing power, such as the content provider 110 or the like. If the content 104 is a relatively small set of information, such as a ring tone, contact information or an icon for example, then the content 104 may be transferred directly from the first device 102 to the second device 108. Larger files, such as media and multimedia files including audio, music and motion pictures may be transferred from the content provider 110. The content 104 may also be transferred at the same time as the uniquely identifiable set of information 106. Even further, the content may also be encrypted before it is transferred to the second device 108 regardless of the source. These are only exemplary embodiments as device capability changes, devices may be able to transfer larger amounts of data

between one another. When the content 104 is created at the first device 102 for example, the first device is the source, and there may or may not be a content provider that could distribute the content 104. The first device 102 would need to be the source regardless of the file size, when another content provider 110 is available.”

As is apparent from this portion of Kotzin, “content” as used by Kotzin does not concern “service settings”. Accordingly, when the Examiner states at page 14 of the April 21 Office Action that

“Next, Kotzin was incorporated to teach that the service settings were provisioned by the service provider, and this is taught at ([0021]-[0022]), wherein ‘The second device then retrieves the content from either the first device or the content provider.’ Therefore, the combination of Flanagan and Kotzin, do in fact disclose the above-argued feature”

the Examiner is in clear error. “Content” is not “service settings” and it is error to construe “service settings” so broadly as to encompass “content”. If the Examiner persists in this rejection, Applicant respectfully request that the Examiner provide a detailed argument setting forth on exactly what basis one skilled in the art would interpret “service settings” to mean “content”. Applicant requests that the Examiner provide specific citations to the relied-upon references (or other prior art) so that Applicant is given a fair opportunity to understand and contest the Examiner’s rejection. Applicants respectfully submit that it would be improper merely to conclude that “content” means “service settings” and vice versa by the Examiner’s fiat because, after all, the relevant party is not the Examiner, but one skilled in the art. If the Examiner believes that one

skilled in the art would construe "service settings" to encompass "content" he must surely have support for this conclusion and the Applicant is entitled to an identification of the factual basis of the support.

In view of the foregoing arguments, Applicant respectfully requests that the Examiner withdraw the rejection of claim 1. Applicants also respectfully submit that independent claims 21, 26, 28, 34, 40 and 43 are allowable for reasons similar to those set forth above with respect to claim 1. Applicants respectfully submit that the remaining art, whether taken singly or in combination with the primary combination does not remedy the deficiencies of the Flanagan and Kotzin combination. Accordingly, Applicant respectfully submits that the remaining dependent claims are allowable both as depending from allowable base claims and for reasons having to do with their independently-recited features.

III. Conclusion

The Applicant submits that in light of the foregoing remarks the application is now in condition for allowance. Applicant therefore respectfully requests that the outstanding rejections be withdrawn and that the case be passed to issuance.

Respectfully submitted,

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Date

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